

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Daniel A. Barnes,

Plaintiff,

v.

**John Ozmint; Mr. Cser; Mr. Powell; Lt. Rice;
Corporal Littleton; Corporal Fuller; Captain
Nettles; and Corporal Guy,**

Defendants.

C/A No. 3:04-21836-CMC-JRM

OPINION AND ORDER

Plaintiff, proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 alleging that, during his incarceration at the Lieber Correctional Institution of the South Carolina Department of Corrections, Defendants (1) failed to protect him from a sexual assault, (2) failed to fully investigate the alleged sexual assault, (3) improperly handled disciplinary violations, and (4) failed to properly address Plaintiff's stolen property claims. Defendants filed a motion to dismiss or for summary judgment. Plaintiff was advised by court order of the summary judgment procedure and the possibility of dismissal of the case if no response was filed. When no response was filed by Plaintiff, a second order was issued July 6, 2005, by the court granting Plaintiff an additional fifteen days in which to advise the court whether he wished to continue to prosecute this action. Plaintiff filed a response on July 13, 2005. In accordance with this court's order of reference and 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), this matter was referred to United States Magistrate Judge Joseph R. McCrorey for a Report and Recommendation.

Based on his review of the record, the Magistrate Judge has recommended that Defendants Nettles, Cser, Rice, and Fuller be dismissed without prejudice for Plaintiff's failure to serve these Defendants; the remaining Defendants' motion for summary judgment (Doc. 29) be granted; and any remaining state claims be dismissed. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

This court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

After reviewing the Complaint, the motion, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference.

IT IS HEREBY ORDERED that Defendants Nettles, Cser, Rice, and Fuller are **DISMISSED** *without prejudice* for Plaintiff’s failure to serve these Defendants; and it is

FURTHER ORDERED that the remaining Defendants’ motion for summary judgment (Doc. 29) is **GRANTED**; and it is

FURTHER ORDERED that any remaining state claims are **DISMISSED**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
December 14, 2005